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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4484 OF 2007

M/s.Chetan Textiles & Anr. ... Petitioners

V/s.

Raju Shriram Pralhad Yadav ... Respondent

Mr.Y.M. Pendse for Petitioners
Mr.G.C. Togari for Respondent

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 8, 2007**

P.C.:

. Rule. By consent of the parties, Rule made returnable forthwith and heard finally.

2. The petition challenges the order of the Labour Court dated 30.4.2007 in Miscellaneous Application (IDA) No.68 of 2006. It also challenges the ex-parte award dated 27.6.2005 in Reference (IDA) No.144 of 2003. After the ex-parte award was passed by the Labour Court, the petitioner filed an application for restoring the Reference. The Labour Court in the impugned order of 30.4.2007 has concluded that since the award becomes enforceable u/s 17A of the Industrial Disputes Act after 30 days from the date of publication, it becomes functus officio. It is held that thereafter it has no jurisdiction to set aside the exparte award if the application is made after the period of 30 days. This

finding of the Labour Court is incorrect.

3. The provisions of section 26(2) of the Industrial Disputes (Bombay) Rules provide as follows:

> 26(2) Where any award, order or decision is made exparte under subrule (1), the aggrieved party, may, within thirty days of the receipt of a copy thereof, make an application to the Board, Court, labour court, Tribunal or an Arbitrator, as the case may be, to set aside such award, order or decision. If the board, Labour Court, Tribunal or Arbitrator is, satisfied that there was sufficient cause for non-appearance of the aggreived party, it or he may set aside the award, order or decision so made and shall appoint a date for proceeding with the matter:
>
> Provided that, no award, order or decision shall be set aside on any application as aforesaid unless notice thereof has been served on the opposite party.

4. Thus, the award can be set aside for sufficient reasons even if the application for restoration had been filed beyond the period of 30 days after publication. In the cases of *Radhakrishna Mani Tripathi v/s. L.H. Patel & Anr.,* **2006 (30 Mh.L.J. 29** and *M/s.South Seas Distilleries & Breweries Pvt. Ltd., Thane v/s. Deepak R. Patne & Anr.*, **2003 Lab.I.C. 262** and *Harrai Desai & sons Stores v/s. Leelavati S. Vaza*, **2000 II CLR 216,** the learned Single Judges of this Court have taken a similar view.

5. Thus, the finding of the Labour Court that it

has no jurisdiction to entertain the Miscellaneous Application after 30 days from the date of publication, is incorrect. The impugned order dated 30.4.2007 in Miscellaneous Application (IDA) No.68 of 2006 set aside. The Labour Court shall decide the Miscellaneous application on merits.

6. The interim relief granted in this petition is extended by a period of four weeks. The petitioners may file an application for interim relief before the Labour Court which would be decided on merits by the Labour Court.

7. Writ Petition is disposed of accordingly.